

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

INGREAT NORRIS SWIFT,

Defendant.

CASE NO. 8:04CR54

MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 22) issued by Magistrate Judge Thomas D. Thalken recommending denial of the Defendant's motion to dismiss (Filing No. 11). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order dismissing the Indictment, arguing that pre-indictment delay violated his Fifth Amendment rights and post-indictment delay violated his Sixth Amendment rights. Judge Thalken determined, with respect to the alleged pre-indictment delay: Swift failed to satisfy his burden of showing actual and substantial prejudice caused by the delay between his December 28, 2002, arrest and the January 23, 2004, federal indictment; and therefore, dismissal of the Indictment on the basis of the Fifth Amendment was not warranted. With regard to the alleged post-indictment delay, Judge Thalken concluded: after a detailed analysis of the four factors set out in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), the factors weigh heavily in the government's favor; and therefore, dismissal of the Indictment on the basis of the Sixth Amendment was not warranted.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the parties' briefs (Filing Nos. 12, 16) and the transcript (Filing No. 21). The Court has also viewed the evidence. (Filing No. 20.) Because Judge Thalken fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 22) is adopted in its entirety; and
2. The Defendant's motion to dismiss (Filing No. 11) is denied.

DATED this 6th day of September, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge